

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
AUG 17 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0352
)	DEPARTMENT A
)	
Appellee,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 111, Rules of
)	the Supreme Court
ROLANDO ENCINAS,)	
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084175

Honorable Clark W. Munger, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Diane Leigh Hunt

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex Heveri

Tucson
Attorneys for Appellant

B R A M M E R, Presiding Judge.

¶1 Rolando Encinas was convicted after a jury trial of burglary in the second degree and possession of burglary tools. The jury found Encinas had committed the

burglary offense “with . . . sexual motivation.” The trial court suspended the imposition of sentence and placed Encinas on five years’ intensive probation, but ordered him to register as a sex offender. Encinas asserts here that the court erred in ordering him to so register. This court will not modify an otherwise lawful sentence unless it constitutes an abuse of discretion. *See State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985); *State v. Davis*, 119 Ariz. 140, 141, 579 P.2d 1110, 1111 (App. 1978) (trial court has discretion to impose probation conditions when appropriate); *see also* A.R.S. § 13-901(A). Because Encinas did not raise this argument below, he has forfeited the right to relief for all but fundamental, prejudicial error. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005).

¶2 Pursuant to A.R.S. § 13-3821(C), when sentencing “for an offense for which there was a finding of sexual motivation pursuant to [A.R.S.] § 13-118,” a trial court “may require the person who committed the offense to register pursuant to this section.” Here, the trial court stated at sentencing that it “believ[ed] it is appropriate [for Encinas] to register as a sex offender so [it would] order that.” The court also stated it thought sex-offender registration was “a necessary element of this.” Encinas asserts the court’s latter statement demonstrates it “thought the sex-registration penalty was a necessary requirement of the jury’s special finding that Encinas had a sexual motivation when he committed the burglary.” Thus, Encinas reasons, the court “fail[ed] to exercise actual discretion” in determining whether Encinas should register as a sex offender. *See State v. Garza*, 192 Ariz. 171, ¶ 18, 962 P.2d 898, 903 (1998) (“When a judge has

discretion and fails to recognize his obligation to use that discretion . . . , we must conclude he abused or failed to exercise that discretion.”).

¶3 Viewing the entirety of the trial court’s statements, it is clear the court understood it had discretion in these circumstances. First, the court stated it “believ[ed]” registration was “appropriate.” Furthermore, the court expressed concern Encinas had been “stalking” the victim, and noted there had been “inappropriate conduct” by Encinas—comments that would have been unnecessary had the court believed it lacked discretion and was required to order Encinas to register. Moreover, Encinas’s attorney reminded the court it had discretion whether to require Encinas to register. Finally, as the state points out, we presume trial courts “know and follow the law and . . . consider all relevant sentencing information before them.” *State v. Medrano*, 185 Ariz. 192, 196, 914 P.2d 225, 229 (1996). Considering all of these factors, it is plain the court’s statement that registration was “a necessary element of this,” reflects nothing more than the court’s discretionary finding that requiring Encinas to register was warranted in these circumstances. There was no error, fundamental or otherwise, and we therefore affirm the court’s order requiring Encinas to register as a sex offender.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge